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Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 03-24 Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§2.00 et. seq. to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ et. seq.

Dear Ms. Cottrell:

Please accept this letter in lieu of reply comments in the above captioned proceeding on behalf of AT&T Communications of New England, Inc. ("AT&T"), pursuant to *NOTICE OF PUBLIC HEARING AND REQUEST FOR COMMENTS* ("Notice"), issued March 13, 2003, and *ORDER INSTITUTING RULEMAKING* ("Order"), issued March 13, 2003.

This rulemaking arises out of the Acts of 2002, c. 239 et. seq., ("Legislation") and is intended to establish a funding mechanism for Enhanced 911 service ("E-911"), relay services for users of telecommunications device for the deaf ("TDD/TTY"), communications equipment distribution program for people with certain disabilities ("adaptive equipment"), and amplified handsets at Massachusetts pay telephones.¹ Specifically, in the proposed rules ("Proposed Rules") the Department of Telecommunications and Energy ("Department") has established a surcharge ("Surcharge"), which would be collected from telecommunications consumers as a means to ensure the continued provision of these services.

¹ *ORDER*, at 1-4.

I. The Department Should Verify The Deficit Amount Through An Audit

As AT&T set forth in its April 22, 2003, *letter in lieu of comments* (“AT&T Comments”) in this proceeding, and as resonated in the comments of other parties,² the E-911 fund deficit determination is an essential element of this rulemaking. In fact, as the Department noted, a significant component of its obligations under the Legislation is the determination of the portion of directory assistance revenue (“DA Revenue”) that is to be used to offset the “deficit incurred by telephone companies prior to the effective date of the Act.”³ Verizon estimates that the Fund’s deficit was \$40 million at the end of 2002.⁴

Notwithstanding Verizon’s claim with respect to the deficit amount, the Department should ensure that the sum is definitively established in a precise and objective manner. As AT&T suggested in its Comments, an independent audit should be performed to corroborate the amount alleged by Verizon.⁵ Such an audit would be essential to ensure that the deficit amount is accurately determined, thus eliminating unsupported costs that would ultimately be factored into the surcharge levied on consumers.

Should the Department alternatively determine not to perform an audit, then as suggested by the Office of the Attorney General, the Department should open an investigation relevant to the deficit amount including, without limitation, the nature, extent and effect of the purported deficit shortfall.⁶ As additionally recommended by the Office of the Attorney General, an investigation in this regard should include, as an integral part thereof, the opportunity for examination of Verizon and the Statewide Emergency Telecommunications Board (“SETB”) witnesses.⁷

II. All Sources Of Revenue Must Be Considered When Determining The Deficit Amount

In addition, any audit or investigation of the E-911 fund deficit should ensure that all relevant revenue, including that received by Verizon, or correctly assessed accounts payable to Verizon, are included in the calculation. As AT&T set forth in its Comments, in addition to DA Revenue, Verizon also receives additional revenue from competitive local exchange carriers (“CLECs”) to help defray E-911 expenses, in accordance with the terms of interconnection agreements.⁸ As an example,

² *See* April 22, 2003, *comments of the Office of the Attorney General* (“Attorney General Comments”), at 3.

³ *Id.*, at 2.

⁴ *Id.*

⁵ *AT&T Comments*, at 2-3.

⁶ *Attorney General Comments*, at 3.

⁷ *Id.*, at 3.

⁸ *AT&T Comments*, at 2-3.

Agreement between New England Telegraph Company d/b/a BA and AT&T Communications of New England, Inc., effective date April 13, 1998, provides that for “911/E911 Interconnection,” AT&T is obligated to pay Verizon a monthly rate of \$252.00 per “unequipped DS1 port” and \$100.00 per month per voice grade trunk “activated and equipped on the DS1 port.”⁹ In addition, AT&T is obligated to pay Verizon \$.05 per line per month for UNE switched lines for E-911 interconnection.¹⁰ Similar obligations of CLECs to provide E-911 compensation to Verizon are found in additional interconnection agreements between Teleport Communications Boston and Verizon, as well as Sprint Communications Company, LLP and Verizon.¹¹

In addition to payments made by carriers to Verizon subject to interconnection agreement obligations, carriers are also billed by Verizon for E-911 costs under Verizon’s Massachusetts Tariff 17. These E-911 charges are assessed on invoices sent in accordance with the purchase, by carriers, of other wholesale services from Verizon.¹² The proceeds from the above-described obligations of CLECs to compensate Verizon for E-911 expenses should clearly be included in any audit or investigation ordered by the Department to establish the deficit amount.

⁹ *Agreement between New England Telegraph Company d/b/a BA and AT&T Communications of New England, Inc.*, effective date April 13, 1998, Section B. VIII, at 159.

¹⁰ *Id.*

¹¹ *See INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996 by and between BELL ATLANTIC-MASSACHUSETTS and TELEPORT COMMUNICATIONS BOSTON, effective date October 29, 1997, Section VII, at 73-74. (911/E911 Interconnection: Bell Atlantic-Massachusetts (“Verizon”) will bill basic 911 traffic at the same rates it bills other local traffic from Teleport Communications Boston, a subsidiary of AT&T Corp. (“TCG”). For E911 service, TCG will pay a monthly rate based on the number of TCG telephone numbers in the E911 database. The monthly rate will be based on the Verizon E911 costs in Massachusetts as reported to the Department each April and will be calculated by dividing the total E911 costs for Residence by the total number of Residence telephone numbers in the data bases added to the total E911 costs for Business divided by the total number of Business telephone numbers in the data base. The total annual costs for Residence and Business will be divided by (12) to develop the total monthly cost for Residence and Business. The monthly bill to TCG will be calculated by multiplying the number of Residence TCG telephone numbers contained in the E911 data base times the monthly rate per telephone number for Residence plus the number of Business TCG telephone numbers in the E911 data base times the monthly rate for telephone numbers for Business.) See also AGREEMENT between Verizon New England inc., d/b/a Verizon Massachusetts and SPRINT Communications Company L.P., effective date December 19, 2001, Pricing Schedule Part IV, Section E, at 102. (SPRINT Communications Company L.P. (“Sprint”) is obligated to pay Verizon a monthly rate of \$252.00 per unequipped DS1 port and \$100.00 per month per voice grade trunk activated and equipped on the DS1 port. In addition, Sprint is obligated to pay Verizon \$.05 per line per month for UNE switched lines for E-911 interconnection.)*

¹² *AT&T is in recent receipt of a number of ‘back billed’ invoices from Verizon for E-911 charges assessed against AT&T affiliates and AT&T’s prior affiliate AT&T Broadband (now Comcast). Despite the fact that the invoices purport to include billing periods retroactive to 2000, Verizon did not begin billing AT&T until April 2003. AT&T is currently evaluating the appropriateness, accuracy and timeliness of said invoices, and will respond accordingly.*

As well, funding from all sources should ultimately be included in the deficit determination. Specifically, payments made by carriers pursuant to the M.G.L. c. 6A §18F annual assessment, based upon annual operating revenues, should similarly be included in the computation.

Additionally, as similarly suggested by the Office of the Attorney General, the Department should determine how much of the deficit is attributable to wireless versus wireline services, and whether the general accounting of the fund has been accurate.¹³ Only after a proper determination of the deficit amount can the Department begin proceedings to determine the appropriate surcharge amount. To that end, AT&T respectfully requests that the Department require Verizon to distribute to requesting carriers in this proceeding, copies of Verizon's E-911 annual funding report for the preceding five (5) years. These reports will assist all carriers in better understanding the E-911 costs as detailed by Verizon.

III. The Surcharge Replaces Prior Mechanisms for E-911 Recovery

The Department should also find that the Surcharge promulgated by the Legislation supplants prior E-911 cost recovery mechanisms. Per the Proposed Rules, the Surcharge amount will ultimately be appropriated such that it will be based on actual expenses that will be incurred for the provision of E-911. Accordingly, obligations by CLECs to pay Verizon for E-911 charges, including the contractual and tariff charges detailed above, will no longer be required. If carriers were required to make continued payments to Verizon for E-911 charges, and Verizon additionally received Surcharge proceeds to defray E-911 costs, it would result in inequitable inefficiency, and potential double recovery. Moreover, the contractual and tariff E-911 charges imposed on carriers by Verizon would likely be passed onto consumers. As such, rather than carriers, and thus consumers, being assessed multiple fees, the Department should rule that the Surcharge replace all prior E-911 cost-recovery mechanisms.

Please feel free to contact me with any questions you may have in this or any other regard.

Yours truly,

Jeffrey Fialky

cc: Joan Evans, Esq., Hearing Officer
Michael Isenberg, Esq., Director of the Telecommunications Division
April Mulqueen, Assistant Director of the Telecommunications Division

¹³ See Attorney General Comments, at 3.